THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

CIVIL REVISION PETITION No.6143 of 2018

ORDER: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

This Revision is filed by the petitioners herein under Section 115 of the Civil Procedure Code challenging the order dated 18.07.2018 in EP.No.697 of 2017 in Arbitration Case No.1 of 2000 of the Chief Judge, City Civil Court, Hyderabad.

2. The petitioners had issued a purchase order dated 10.07.1996 to M/s. Sinclaire Electronics Industries Ltd. for purchase of 4/36 MARR Systems (VHF) Range with accessories fixing the delivery schedule of four months for a cost of Rs.5.40 crores.

3. Disputes arose between them and M/s. Sinclaire Electronics Industries Ltd. filed WP.No.12887 of 1999 before this Court.

4. A learned single Judge had dismissed the writ petition on 05.07.1999.

5. It then challenged the order in an appeal viz. WA.No.994 of 1999 before a Division Bench of this Court.

6. On 05.07.2000, there was an agreement between the parties that the disputes be decided through arbitration and the Division Bench disposed of the writ appeal on that day appointing Justice C.V.N. Sastri, former Judge of this Court, as the arbitrator.

7. During the course of the arbitration proceedings, M/s. Sinclaire Electronics Industries Ltd. changed its name to M/s. Sinclaire Infra Tech Ltd. on 28.06.2000.

8. A miscellaneous application was filed by the respondent before the arbitrator to amend the cause title to reflect the name of the respondent as Ms/. Sinclaire Infra Tech Ltd. in the place of M/s. Sinclaire Electronics Industries Ltd. This application was not opposed by the petitioners and it was ordered on 22.10.2000.

9. Thereafter, on 25.03.2001, an award was rendered by the arbitrator in Arbitration Case No.CVNS 1 of 2000. The operative portion of the order is as under:

> "…It now remains to be considered as to what relief / reliefs the claimant is entitled to. Through the final Purchase order was for 90 systems, while granting the last and final extension of time for delivery on 5/12-2-98, DOT limited the supply to 57 systems only. The claimant did not demur to the reduction of the quantity to 57 systems and accordingly it made ready the 57 systems and offered the same for inspection on 9-3-98 within the extended delivery period. The opposite parties are, therefore, bound to accept the said 57 systems subject to their being found fit in the Q.A. testing, the claimant is entitled to be paid for the same at the rate of Rs.6,51,000/- per system which is the firmed up price. However, as the claimant has not disputed the right of DOT to impose liquidated damages to the maximum extent of 5% of their value, the same has got to be deducted from the total amount to be paid the claimant for the said 57 systems. The claimant will also be entitled for interest on the amount due and payable to it at 12% per annum from 15.03.1998 till the date of the award dated 25.03.2001 and thereafter at the rate of 15% per annum till payment. DOT shall accordingly calculate and pay the amount due to the claimant. DOT shall allow to the claimant a reasonable time of not less than three months to facilitate the completion of all the testing procedures and dispatch of the equipment to the consignees. DOT shall also return to be claimant the performance bank-guarantee furnished by it.
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> Having regard to the facts and circumstances of the case, I find it just and proper to direct each party to bear its own costs. The claimant has deposited a sum of Rs.3,00,000/- (Rupees Three Lakhs) towards my fees. I direct that both the parties should bear the same in equal proportions i.e., the

> claimant shall be entitled to recover half of the said amount from the opposite parties.
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> An award is accordingly passed granting the reliefs to the extent indicated above in favour of the claimant. All other claims put forward by the claimant stand disallowed."

10. This award was questioned by the petitioners in OP.No.1544 of 2001 under Section 34 of the Arbitration and Conciliation Act of 1996.

11. On 21.12.2001, the said OP was disposed of by the II Additional Chief Judge, City Civil Court, Hyderabad.

12. This was challenged in CMA.No.2818 of 2002 before this Court.

13. In the meantime, EP.No.2 of 2002 had been filed by the respondent before the Chief Judge, City Civil Court, Hyderabad. An order was passed on 14.09.2004 in the said EP. The said order was challenged in CRP.No.4931 of 2004 by the petitioners.

14. On 13.07.2012, CMA.No.2818 of 2002 and CRP.No.4931 of 2004 were both disposed of confirming the award but clarifying that the respondent in terms of the award should discharge its obligation by offering the systems for inspection of the petitioners after the award was passed and it is not open for it to unilaterally execute the award. The order passed in the EP was set aside granting liberty to the respondent to seek fresh execution after offering the systems for inspection; or in the alternative offer the systems for quality inspection testing and seek a direction to the BSNL in this behalf in the fresh execution proceedings itself in terms of the award.

15. There was a review sought of the said order in Rev.CMP.No.5602 of 2012 by the respondent in CRP.No.4931 of 2004, which was rejected on 26.02.2013.

16. The respondent challenged it in the Hon'ble Supreme Court in SLP(C) 28222-28223 of 2013 and on 16.11.2016, these applications were dismissed.

17. Thereafter, EP.No.697 of 2017 was filed by the respondent seeking execution of the award dated 25.03.2001 and seeking to recover Rs.12,38,66,751.94 ps. invoking Order 21 Rule 46 read with Rules 54 and 64 CPC and seeking attachment of the bank accounts in State Bank of India and Union Bank of India and also immovable property of the BSNL at Hyderabad.

18. Objections were filed to the said EP by the petitioners stating that once there is change in name of the respondent from M/s. Sinclaire Electronics Industries Ltd. to M/s. Sinclaire Infra Tech Ltd., the execution petition cannot be maintained by the latter; and the claim of the respondent is barred by limitation having regard to Article 137 of the Limitation Act, 1963.

19. It was contended in the objections by the petitioners that the award dated 25.03.2001 was upheld on 13.07.2012 in CMA.No.2818 of 2002 and CRP.No.4931 of 2004 directing the respondent to make fresh offer and the said offer was made only on 06.02.2017 and that too to an improper authority and the said offer, therefore, cannot be considered as an offer at all. Reliance was placed on the judgment of the Supreme Court in KHARDAJ COMPANY LTD. v. RAYMON AND CO. (INDIA) PRIVATE LTD.[1] and it was contended that since the original contract is with M/s. Sinclaire Electronics Industries Ltd. and the said contract has never been assigned and there is no purchase order standing in the name of M/s. Sinclaire Infra Tech Ltd., the relief in the EP cannot be granted.

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[1] AIR 1962 SC 1810

20. By order dated 18.07.2018, the Court below allowed EP.No.697 of 2017 rejecting both the objections and directed the respondent to produce 57 System for Quality Assurance Test within 15 days from the date of its order, specifying the date, place at which the inspection should be conducted by duly giving notice to the petitioners and if they fail to get the systems inspected, the decree holder/respondent should file a report to that effect enabling the Court to pass further orders in the execution petition. The Court below held that the grievance of the petitioners regarding the change of name of the respondent from M/s. Sinclaire Electronics Industries Ltd. to M/s. Sinclaire Infra Tech Ltd. cannot be countenanced since the matter was dealt with by this Court while considering the Rev.CMP.No.5602 of 2012 in CRP.No.4931 of 2004 on 26.02.2013. It also observed that the name of the Department of Telecom itself underwent change and it has been called Bharat Sanchar Nigam Limited during the pendency of the proceedings and merely because the name of the respondent is changed, it would not alter the status of the decree holder or prevent the decree holder from executing the award, as the entities are same, though the names are changed. It further held that as per the order passed by the High Court on 13.07.2012 in CMA.No.2818 of 2002, the petitioners did not produce any authority to prove that the systems cannot be inspected without the documents mentioned by them because there is no such direction issued by the High Court in the said order. It also recorded the contention of the respondent that all the documents are available with the petitioners and that the petitioners cannot insist those documents to be produced by the respondent in order to proceed to comply with the directions of the High Court. However, it granted one opportunity to the petitioners to stipulate the time and on their failure directed that it would pass orders.

21. Assailing the same, this Revision is filed.

22. On 24.10.2018, this Court granted interim stay of the execution of the award.

23. IA.No.1 of 2019 is filed to vacate the said order.

24. Heard Sri P. Venugopal, learned senior counsel appearing for Sri. R.S. Murthy, learned counsel for the petitioners and Sri Y. Rama Rao, learned counsel for the respondent.

25. Sri P. Venugopal contended that the systems, for which the purchase order was passed on 10.07.1996, have now become obsolete and therefore, the award should not be permitted to be executed by the executing Court.

26. This point was raised even before the arbitrator and was reiterated in CMA.No.2818 of 2002 at paras 33 and 34 but the petitioners failed to convince this Court to hold in their favour and their appeal in CMA.No.2818 of 2002 was dismissed on 13.07.2012 rejecting the said plea.

27. Having failed in the said attempt, in the challenge to the arbitral award, it is not open to the petitioners to again raise the said contention during the execution proceedings and the principle of *res judicata* would apply and bar the petitioners from raising the said plea again.

28. Counsel for the petitioners then sought to contend that in view of the judgment of the Supreme Court in KHARDAJ COMPANY LTD.'s case (1 supra), the respondent cannot be permitted to execute the arbitral award since its name got changed.

29. It is not in dispute that the name of the respondent got changed on 28.06.2000 during the pendency of the arbitral proceedings and before the arbitrator an application was moved by M/s. Sinclaire Electronics Industries Ltd. to change its name to M/s. Sinclaire Infra Tech Ltd. in the cause title and the said application was not opposed by the petitioners and it was ordered on 22.10.2000.

30. In the challenge to the arbitral award in CMA.No.2818 of 2002, the petitioners again canvassed the said contention and the Division Bench in its order dated 13.07.2012 referred to the arbitral proceedings dated 22.10.2000 and negatived this plea of the petitioners.

31. Having failed in the said attempt, in the challenge to the arbitral award, it is not open to the petitioners to again canvass the said contention in the execution proceedings and they are precluded from doing so because of the doctrine of *res judicata*.

32. Though the counsel for the petitioners also raised the plea of bar of limitation, since EP.No.697 of 2017 was filed within twelve (12) years from the order dated 13.07.2012 in CMA.No.2818 of 2002 and CRP.No.4931 of 2004, it cannot be said that the EP is barred by limitation.

We, therefore, do not find any merit in the Civil Revision Petition. It is accordingly dismissed with costs. The interim order granted in the CRP is vacated.

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M.S. RAMACHANDRA RAO, J

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T. AMARNATH GOUD, J

January 28, 2020
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